

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CHRISTOPHER HUTCHINSON,	:	Case No. 1:14-cv-874
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, LONDON CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY  
ADOPTING THE REPORT AND RECOMMENDATIONS (Doc. 18) AND  
THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. 22)  
OF THE UNITED STATES MAGISTRATE JUDGE**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on November 6, 2015, submitted a Report and Recommendations (“R&R”). (Doc. 18). Petitioner objected to the R&R. (Doc. 20).

This Court then recommitted the case to the Magistrate Judge for reconsideration in light of the objections. (Doc. 21). Pursuant to such reference, the Magistrate Judge reviewed the objections, and, on December 9, 2015, submitted a Supplemental Report and Recommendations (“Supplemental R&R”). (Doc. 22). Petitioner objected to the

Supplemental R&R. (Doc. 24).<sup>1</sup>

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such R&R and Supplemental R&R should be and are hereby **ADOPTED** in their entirety. Accordingly, for the foregoing reasons:

1. Respondent's Motion to Dismiss (Doc. 13) is **GRANTED**;
2. Petitioner's petition for a writ of habeas corpus (Doc. 1) is **DISMISSED WITH PREJUDICE**;
3. Because reasonable jurists would not disagree with this conclusion, Petitioner is **DENIED** a certificate of appealability;
4. The Court certifies that an appeal of this Order would be objectively frivolous, and therefore Petitioner will not be permitted to proceed *in forma pauperis*; and

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<sup>1</sup> Petitioner renews his previous objections, which were fully addressed in the Magistrate Judge's Supplemental R&R. (Doc. 22). This Court adopts the Magistrate Judge's reasoning as explained therein. Contrary to Petitioner's claim, the Magistrate Judge did respond to the substance of his fourth objection (although it was labeled as a response to the third objection). (*See id.* at 3–4). Petitioner cites to the Staff Notes to the 1993 Amendment to Rule 26 for the proposition that an applicant is permitted, but not required, to submit portions of the record with his application to reopen an appeal. (*See* Doc. 24 at 3). Even assuming the staff notes stand for this proposition: (1) the staff notes conflict with the plain text of Rule 26(B)(2) ("An application for reopening shall contain all of the following . . ."); (2) the staff notes conflict with the holding of the Ohio Supreme Court in *State v. McNeill*, 83 Ohio St. 3d 457, 458–59, 700 N.E.2d 613 (1998); and (3) the staff notes to a procedural rule are not binding. *In re M.C.*, 10th Dist. Franklin No. 12AP-618, 2013-Ohio-2109, ¶ 48 (citing *Freeman v. Beech Aircraft Corp.*, 12th Dist. No. 80–11–0119 (Sept. 30, 1983)). For these reasons, and for the reasons set forth in the R&R (Doc. 18) and Supplemental R&R (Doc. 22), Petitioner's objections (Docs. 20, 24) are **OVERRULED**.

5. The Clerk shall enter judgment accordingly, whereupon this civil action is **TERMINATED** in this Court.

**IT IS SO ORDERED.**

Date: 2/5/16

*s/ Timothy S. Black*  
Timothy S. Black  
United States District Judge